IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: W. Thomas Novak

Application No. 10/765,703

Filed: January 26, 2004

Confirmation No. 1405

For: ADAPTIVE-OPTICS ACTUATOR ARRAYS AND METHODS FOR USING SUCH ARRAYS

Examiner: Ricky D. Shafer

Art Unit: 2872

Attorney Reference No. 6500-65537-01

CERTIFICATE OF MAILING

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP AMENDMENT COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on the date shown below.

Attorney or Agent for Applicant(s) Donald L. Stephens, Jr.

Date Mailed December 1, 2005

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TRANSMITTAL LETTER

Enclosed is a Reply to Second Restriction for the above application. The fee has been calculated as shown below.

CLAIMS AS AMENDED						
For	No. after amendment	No. paid for previously		Present Extra	Rate	Fee
Total Claims	38	- 93*	=	0	$50.00	$ 0.00
Indep. Claims	7	- 12**	=	0	$200.00	$ 0.00
Mult. Dep. Claims Fee (if not previously paid)					$360.00	
One-month Extension of Time					$120.00	
Two-month Extension of Time					$450.00	
Three-month Extension of Time					$1,020.00	
TOTAL ADDITIONAL FEE FOR THIS AMENDMENT						$0.00

* greater of twenty or number for which fee has been paid.
** greater of three or number for which fee has been paid.

☒ No additional fee is required.

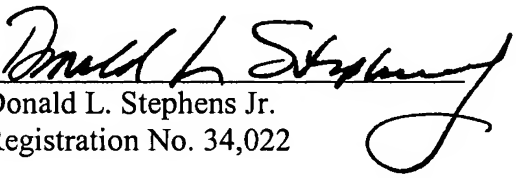
☒ Please charge any additional fees that may be required in connection with filing this amendment and any extension of time, or credit any overpayment, to Deposit Account No. 02-4550. A copy of this sheet is enclosed.

☒ If the Patent and Trademark Office determines that this amendment results in an additional application size fee for pages in excess of 100, please charge the fee to Deposit Account No. 02-4550. A copy of this sheet is enclosed.

☒ Please return the enclosed postcard to confirm that the items listed above have been received.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By 
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REPLY TO SECOND RESTRICTION

This paper is in reply to the second Restriction, dated November 3, 2005.

Applicant elects, with traverse, the claims of species I, namely claims 2 and 39-41. Applicant notes the examiner's statement that claim 1 links species I-III and V. Hence, it is presumed that Applicant's election of species I will also result in claim 1 being examined. If claim 1 ultimately is allowed, then Applicant would request that the claims of species II-III and V be restored to the current application.

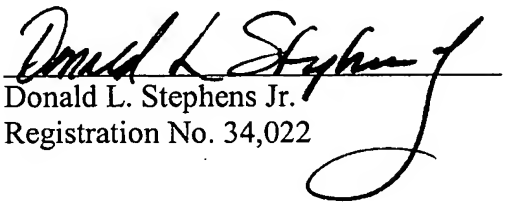
This is a reply to a second Restriction. The first Restriction, dated June 29, 2005, also was a species restriction, in which the originally filed claims were grouped into "patentably distinct" species and subspecies. In the first Restriction, the Applicant was required "to elect a single disclosed species for prosecution on the merits." Applicant also was required twice "to elect a single disclosed subspecies for prosecution on the merits." In reply (dated July 28, 2005) to that first Restriction, Applicant responded as requested, electing the species shown in FIG. 3, in which the force device is hydraulically actuated and the force device is hydraulically braked. In his reply, the Applicant justifiably expected that the elected claims would proceed to

"prosecution on the merits" as the first Restriction stated they would. Now the second Restriction indicates that Applicant's rightful expectation was in fact illusory. If the species and subspecies noted in the first Restriction were "patentably distinct," then what were the defensible grounds for the second Restriction? Why did the first Restriction not include the "full story" as to the manner in which the Examiner intended ultimately to divide up the claims? The piecemeal character of prosecution of this application (contrary to the requirement in MPEP §§814-815) so far is certainly evident and hereby traversed.

For the record, it is pointed out that the decision-making process that applicants (and their assignees) must execute in order to reply to a Restriction is not trivial. The decision often involves economic and marketing considerations, and preparation of each Response entails expense. Applicant and his Assignee previously made a first decision, and have now made a second decision. A proper first Restriction would have avoided the trouble and expense of the second decision entirely. Therefore, the second Restriction is emphatically traversed, and its withdrawal is requested.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By 
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